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USA v. Mitchell

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 07-2174

UNITED STATES OF AMERICA

v.

DAVID W. MITCHELL,
Appellant

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Crim. No. 04-cr-00007-1J)
District Judge: Honorable Kim R. Gibson

Submitted for Possible Summary Action Pursuant to Third Circuit
LAR 27.4 and I.O.P. 10.6
November 8, 2007

Before: BARRY, CHAGARES and ROTH, Circuit Judges

(Opinion filed March 28, 2008)

OPINION

PER CURIAM

David Mitchell appeals the District Court's order denying his motion filed

pursuant to Rule 35(a) of the Federal Rules of Criminal Procedure. On April 28, 2005, the District Court for the Western District of Pennsylvania sentenced Mitchell to ninety-six months in prison based on his plea of guilty to burglary of a federal firearms licensee. On January 31, 2007, Mitchell filed a Rule 35(a) motion. The District Court denied the motion as untimely, and Mitchell filed a timely notice of appeal.

We have jurisdiction under 28 U.S.C. § 1291. Under Rule 35(a), the District Court “may correct a sentence that resulted from arithmetical, technical, or other clear error” within seven days after sentencing. Mitchell filed his Rule 35(a) motion nearly two years after sentencing. Thus, we agree with the District Court that the motion was untimely.

Summary action is appropriate if there is no substantial question presented in the appeal. See Third Circuit LAR 27.4. For the above reasons, as well as those set forth by the District Court, we will summarily affirm the District Court’s order. See Third Circuit I.O.P. 10.6.